IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants:	Song et al.
Appl. No.:	10/743,501
Conf. No.:	7778
Filed:	December 22, 2003
Title:	METHOD FOR CONTINUOUS GUM BASE MANUFACTURING
Art Unit:	1761
Examiner:	A. Corbin
Docket No.:	112703-316

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF

Dear Sir:

I. INTRODUCTION

This Reply Brief is submitted in support of the Appeal filed on June 20, 2005 from the final rejection of the above-identified patent application. More specifically, this Reply Brief is submitted in response to the Examiner's Answer mailed on August 16, 2005. Because this Reply Brief is being submitted within two months from the Examiner's Answer, Appellants submit that it is timely. This Reply Brief addresses the new arguments set forth in the Examiner's Answer.

II. THE REFERENCES IN AND OF THEMSELVES DEMONSTRATE THAT THE OBVIOUSNESS REJECTION IS NOT PROPER

With the use of hindsight, it is clear that every invention is obvious. Accordingly, the Federal Circuit has mandated "the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-84 (Fed.Cir. 1992).

The key issue in this appeal is whether or not the references of record, *Naumann*, *Reggio* and *Boudy*, in combination, would be viewed by one of ordinary skill in the art as necessarily leading to the claimed invention. Appellants submit that they would not. Appellants have pointed out that one skilled in the art would not be motivated to combine the references, as there is no teaching or suggestion in any of the references to make such a combination.

In the first instance, the Examiner's Answer states that *Naumann* discloses production of a gum base in a single continuous apparatus. However, the pre-mix of *Naumann* is discharged from the mixer; the pre-mix is transferred to a different mixer. *Naumann*'s multi-stage process clearly differs from Appellants' continuous process. Hence, the Patent Office must use *Reggio* to attempt to remedy the deficiencies of *Naumann*.

Appellants demonstrated in their Appeal Brief that *Reggio* does not remedy the *Naumann* deficiencies. Yet the Examiner's Answer argues that this argument is misplaced because "Reggio is merely relied upon for the concept of adding an elastomer to a chewing gum mixer without first pretreating or preblending the elastomer with another component." (Answer at p. 4). This is not the point of this line of argument. Rather, Applicants are pointing out why it would not be obvious to one skilled in the art to modify *Naumann* based on *Reggio*. *Naumann* teaches away from the process disclosed by *Reggio* because all of the gum components in the *Naumann* process are not mixed in a single mixer. Accordingly, this argument is not relevant to a lack of motivation to combine the two references. Instead, this issue is directed to whether or not the references teach away from the suggested combination.

Neither *Naumann* nor *Reggio* teaches, discloses or suggests a single mixing apparatus including at least two mixing zones. Nothing in the Examiner's Answer contradicts this argument.

Furthermore, the Examiner's Answer states that *Naumann* discloses that the mixing of the premix and other starting material is not part of the addition or compounding steps necessary "to produce gum base," as required by the claimed invention. (Answer at p. 3). Appellants submit that this contention is factually incorrect. The claimed invention involves a single continuous mixing apparatus to perform "all of the addition and compounding steps necessary to produce gum base." This includes all of the addition and compounding steps in a single continuous mixing apparatus, not just the "necessary" steps, inferred by the Examiner's Answer. Accordingly, *Naumann* does not teach, disclose or suggest the claimed invention.

Similarly, the Examiner's Answer states that *Boudy* "is merely relied upon to show that appellant's claimed counter-rotating twin-screw extruder is a conventional extruder used in preparing chewing gum base." (Answer at p. 4). This argument, too, is inapposite. *Boudy* does not suggest or disclose a single mixing apparatus having at least two mixing zones for preparing a gum base. As such, one of ordinary skill would not look to *Boudy* to remedy the deficiencies or *Naumann* or *Reggio*, even in combination, and, as Appellants have demonstrated, a person of ordinary skill in the art would not be motivated to combine *Naumann* and *Reggio* with *Boudy* to achieve the claimed invention.

Accordingly, for at least these reasons, Appellants respectfully submit that the claimed invention is not obvious.

III. CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Board reverse the Examiner's rejections as they are based on an incorrect interpretation of the facts and law.

Respectfully submitted,

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BY _____

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Dated October 17, 2005